

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2894 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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R M NAYAK

Versus

DY. DIST. DEVELOPMENT OFFICER

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Appearance:

MR YN OZA for Petitioner

None present for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 24/06/1999

ORAL JUDGEMENT

#. Mr.H.S.Munshaw, who is the advocate for respondent No.1 states that he may be granted some time to checkup in his office whether he has returned the brief to the Panchayat or not. However, Mr.Munshaw submits that he has not with him the papers of this matter in the Court today. Mr.R.N.Shah, who is present for Mr.M.R.Shah, advocate, submits that he may be granted some time to

checkup in his office whether papers of this case have been received by Mr.M.R.Shah, Advocate, from the Panchayat or not.

#. I do not find any justification in the request of either of the advocates for deferment of hearing of this matter which is of the year 1992. It is sorry state of affairs that the District Panchayat, despite of making payment of handsome amount for defending litigation against it, this is what now its position is. In view of this fact, I am not marking attendance of any of the advocates for respondent No.1 in this case. Nobody is present on behalf of respondent No.2 also.

#. The petitioner, an employee of District Panchayat, Mahesana, was convicted in a criminal case for offences punishable under Sections 409, 477A, 193, and 196 of the Indian Penal Code, by Judicial Magistrate, First Class at Patan, in Criminal Case No.68/80 and 69/80, decided on 23.1.85. The petitioner was booked for these offences as he has misappropriated money of the Panchayat. However, instead of sending him to imprisonment, the Judicial Magistrate concerned at that time thought it fit of releasing him on probation of good conduct for one year with certain conditions.

#. It is a case where the learned Magistrate has taken a very lenient view. Where the charges of misappropriation of the Panchayat money was proved against the petitioner, he should have been sent to imprisonment. Be that as it may, the District Panchayat has rightly proceeded against the petitioner by initiating departmental inquiry for this serious misconduct. The petitioner was served with a chargesheet vide memo dated 5.11.85 and the charges of misappropriation of the Panchayat money were found proved. After the second show cause notice, the petitioner was ordered to be dismissed from services of the Panchayat. Against the order of disciplinary authority, the petitioner filed an appeal before the District Development Officer which came to be rejected on 30th July 1991. He has not felt contented by this decision more so where he has been convicted for this offence and only on this conviction he should have been dismissed from services. He approached to the Gujarat Civil Services Appellate Tribunal at Gandhinagar, which appeal came to be dismissed on 5.3.92. The punishment of "dismissal from services" was substituted by punishment of "removal from services".

#. The learned counsel for the petitioner raised two contentions that the Deputy District Development Officer

was not competent to dismiss the petitioner from services. It has next been contended that the petitioner has been released on good conduct and his conviction for misappropriation of Panchayat money could not have been taken to be disqualification from services.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the petitioner.

#. So far as the first contention is concerned, it is suffice to say that the petitioner has not raised this contention before service Tribunal. The petitioner has also not produced on the record, any material to show that he has raised this contention before the Appellate Authority, i.e. the Departmental Appellate Authority. So this plea cannot be permitted to be raised in the proceedings under Article 227 of the Constitution of India. Otherwise also, I do not find any material on record to substantiate this contention by the petitioner's counsel.

#. The petitioner has been convicted for a very serious offence, i.e. misappropriation of Panchayat money. Even if the contention of the learned counsel for the petitioner has some substance or merits, looking to the facts that he has been convicted for such serious offence and on proof of the same in the departmental inquiry, minimum sentence would have been of dismissal from services, as what their Lordships of Supreme Court have said in the case reported in 1997(1) SCC 299, it is not a fit case where this Court should interfere with the order. It is a case where the Criminal Court has taken the matter very leniently and though the petitioner was found guilty of misappropriating the Panchayat money, he was not sent to imprisonment. The Department has seriously taken this matter and rightly so. The employees who misappropriate the Government money or Panchayat money, as the case may be, on proof of that charge, the should not be allowed to continue in services. The contention of the learned counsel for the petitioner that as the petitioner has been released on good conduct and given the benefit of Probation of Offenders Act, this punishment could not have been given, is wholly misconceived and cannot be accepted. Where an employee of the Panchayat has misappropriated the Panchayat money, it is the serious misconduct as well as criminal liability and the Panchayat is perfectly legal and justified to proceed against him by filing criminal case as well as by initiating departmental inquiry. Both these proceedings could have gone simultaneously in a proper case. The Panchayat has acted fairly and

reasonably in this case to dismiss the petitioner before the criminal case is finally decided. The decision given by the disciplinary authority is perfectly legal and justified and the Tribunal has rightly not interfered with the same. I do not find any illegality, much less a jurisdictional error in the order of the Tribunal which calls for interference of this Court under Article 226 or 227 of the Constitution of India.

#. In the result, this writ petition fails and the same is dismissed. Rule discharged. No order as to costs.

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[sunil]